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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

1998 Biennial Regulatory Review – Review of
the Commission's Broadcast Ownership Rules
and Other Rules Adopted Pursuant to Section
202 of the Telecommunications Act of 1996

MM Docket No. 98-35

**REPLY COMMENTS OF THE CHRONICLE PUBLISHING COMPANY
SUPPORTING REPEAL OF THE NEWSPAPER/
TELEVISION CROSS-OWNERSHIP RULE**

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I. INTRODUCTION AND SUMMARY

The Chronicle Publishing Company (the “Chronicle Company”) offers this reply to the comments submitted in response to the Commission’s Notice of Inquiry in the above-captioned proceeding released March 13, 1998 (the “Notice”). As the licensee of KRON-TV, San Francisco (“KRON”), and the owner of the *San Francisco Chronicle* (the “Chronicle”), the Chronicle Company continues to urge repeal of the newspaper-television cross-ownership restriction (the “newspaper rule”)¹ in the belief that such combinations foster development of new local media.

Virtually all of the comments that addressed the newspaper rule argued for its repeal. Some comments focused on the explosion of media outlets that render the rule outdated and unnecessary. Others emphasized the unfairness of prohibiting newspapers and broadcasters from combining, even though their competitors may merge freely. Several stressed the constitutional

¹ 47 C.F.R. 73.3555(d). This rule provides that no radio or television broadcast license shall be granted to any party that owns, operates or controls a daily newspaper in the same market as the desired radio or television station.

dimension of such unfairness, arguing that the newspaper rule violates the First Amendment and the Equal Protection Clause. Most importantly, a number of commenters with experience in running a local newspaper and television station in the same market joined the Chronicle in demonstrating that the newspaper rule will deter the development of robust new media and innovative local content within many communities. It is this last point on which we particularly urge the Commission to focus. Localism is at the heart of this proceeding, since a rule prohibiting co-ownership of newspapers and television stations in the same market is quintessentially aimed at local content. One of the most significant ways the Commission can serve the goal of localism is to allow companies with the most deep-seated interest in the local community to undertake the costs and risks associated with the development of new sources of news and information.

Only two sets of comments argued for retention of the newspaper rule.² These repeated many of the unsupported assumptions that originally motivated the newspaper rule, but that are now discredited and contradicted by the record. It is clear from the comments that combined newspaper-broadcast entities, like the Chronicle Company, do not combine news staffs, homogenize viewpoints, or decrease the quantity or quality of local news provided to the public. To the contrary, they increase news staffs in multiple outlets, find different ways to express a broader range of viewpoints, substantially increase news and public affairs content, and embrace controversy and criticism. Finally, as our initial comments showed, newspaper-television

² They are the Comments of Office of Communication, Inc., United Church of Christ and Black Citizens for a Fair Media and the Comments of Center for Media Education, Chinese for Affirmative Action, The Civil Rights Forum, Feminist Majority Foundation, League of United Latin American Citizens, Minority Media and Telecommunications Council, NOW Legal Defense and Education Fund, Philadelphia Lesbian and Gay Task Force, Rainbow/Push Coalition, and Women's Institute for Freedom of the Press. Even these comments do not focus on the newspaper rule. Neither set of comments devotes more than one or two pages to specific discussion of the rule.

combinations have the capacity and incentive to create new media (like internet sites) that provide local news and public affairs content differently and often earlier than separately operated television or newspapers can or will do.

II. OPPOSITION TO THE NEWSPAPER RULE IS NEARLY UNANIMOUS

Sixteen sets of comments were filed on the newspaper rule. All but two agreed with the Chronicle Company that the newspaper rule should be abolished. Opposition to the newspaper rule came from a diverse group of commenting parties, ranging from major networks, broadcasters, and trade associations to small radio stations and a non-profit research foundation. Many of these commenters do not own newspapers and do not compete against broadcast-newspaper combinations; they clearly have no current direct economic interest in this issue. In light of the wide diversity of interests typically implicated by communications policy, such virtual unanimity should send the Commission a powerful message that the newspaper rule has outlived its usefulness. Many of the comments, like ours, highlighted the benefits that repeal of the newspaper rule would produce for the public. In addition, they showed how retention of the rule is unnecessary, unfair, and unconstitutional.

The comments argue forcefully that the newspaper rule was never necessary and is certainly not necessary now given the explosion of media choices available to Americans.³ Many point to the growth in the number of radio and television stations, the rise of cable

³ See, e.g., Comments of ABC, Inc. ("ABC") at 26 (concluding that "in view of the explosion of available outlets, any remaining concerns about diversity are too conjectural to warrant maintaining government restraints on efficiency and innovation."); Comments of the Association of Local Television Stations, Inc. ("ALTV") at 34; Comments of Cox Broadcasting, Inc. and Media General, Inc. ("Cox") at 2 ("vast changes in media technology, including the advent of the Internet, have taken place, making retention of the rule inexcusable"); Comments of Freedom of Expression Foundation, Inc. ("FOE") at 11; Comments of the Newspaper Association of America ("NAA") at 45, 56; Comments of The Media Institute at 14; Comments of the Hearst Corporation at v. 9-14 ("Hearst"); Comments of the Tribune Company ("Tribune"), at 22-25; Comments of A.H. Belo Corporation ("Belo") at 29; Comments of the Gannett Co., Inc. ("Gannett") at 7-17; Comments of Elyria-Lorain Broadcasting Company ("Elyria") at 5, 12.

television, and competition from new technologies to demonstrate that newspaper-broadcast combinations cannot dominate the marketplace of ideas.⁴ Others show that repeal of the newspaper rule would have no negative effects on competition in the programming, production, and advertising markets.⁵ The comments also demonstrate that the number and variety of newspapers, especially of weekly and suburban newspapers, has increased substantially.⁶ Absent the scarcity of voices that was once said to justify the newspaper rule, the rule surely cannot be sustained on grounds that it is necessary to preserve competition or diversity.

In light of the explosion of new media, many commenters complain that the newspaper rule is unfair to both broadcasters and newspaper owners. Repeal of the newspaper rule would level the playing field and allow newspapers and television stations to thrive amid increased competition from cable companies, telephone companies, and new media such as those beginning to exploit the internet.⁷ If the Commission fails to repeal the newspaper rule, having repealed many similar rules, it will in effect be singling out newspapers and broadcasters – concluding that almost any type of combination is permissible except a combination between those two.⁸

⁴ See, e.g., Comments of ALTV at 32; Comments of FOE at 11; Comments of Tribune at 28

⁵ See, e.g., Comments of the Media Institute at 2-3; Comments of NAA at 32, 68-82; Comments of Hearst at 17-19; Comments of Belo at 29

⁶ See Comments of NAA at 33-35; Comments of Gannett at 5-6.

⁷ See Comments of Elyria at ii, 22. See also Comments of FOE at 4; Comments of the NAA at 55-65; Comments of Belo at 27-28.

⁸ See Comments of the Tribune at 10-13. Concerns about the effects of mega-mergers should not deter the Commission from repealing the newspaper rule. See FOE at 11 (consolidation in radio industry does not produce market domination); Comments of ABC at 7, 14 (Group television ownership improves programming). Whatever the merits of such mergers, they have little to do with the combination of a local station and newspaper, where the entities have every incentive to apply specifically local expertise to deeper and broader local news, entertainment and information content. Regardless of the state of competition at the national level, local competition has never been more robust. Indeed, as one commenter stated, "[a]t a time when mega-mergers between dominant long distance carriers and cable

Finally, in considering the merits of repealing the newspaper rule, the Commission must take seriously the argument that the inherent unfairness of the rule reaches constitutional proportions – that it violates the First Amendment⁹ by favoring some classes of speakers over others and that it does so in the absence of a compelling state interest or even a rational nexus to the claimed state interest.

III. THE NEWSPAPER RULE DETERS THE DEVELOPMENT OF INNOVATIVE LOCAL MEDIA

Taken together, the many comments supporting repeal of the newspaper rule show that the public benefits of common ownership can be substantial. Several commenting parties demonstrate that newspaper-broadcast combinations provide superior local news and public affairs coverage,¹⁰ largely reflecting the capacity and intention to build from shared resources.¹¹ Many commenters join the Chronicle Company in demonstrating that such combinations also spur innovation and provide the best hope for the rapid development of risky and expensive new media focused on local news and information.¹²

A. Common Ownership Enhances Commitment to the Community

The Chronicle Company agrees with the Office of Communication, Inc. United Church of Christ and the Black Citizens for a Fair Media ("UCC") that one of a broadcaster's "most

MSO's are taking place, it is ludicrous for the Commission to be in the business of micromanaging the local media markets by such severe restrictions." *See* Comments of FOE at ii.

⁹ Cox Broadcasting argues that the Commission has no rational basis to permit DBS licensees and authorized telephone providers to own in-market newspapers while preventing such ownership by broadcasters. As a result, the newspaper rule also violates the Equal Protection Clause. *See* Comments of Cox at 25.

¹⁰ *See, e.g.,* Comments of Belo at 11 and the attached study.

¹¹ *See* Comments of Hearst at 2-3, 19-23; Comments of Elyria at 15; Comments of FOE at 20.

¹² *See, e.g.,* Comments of ABC at 2-3; Comments of Belo at 12-14; Comments of Gannett at 5, 27-32; Comments of Hearst at 2-3;

critical roles [is] providing coverage of local issues."¹³ In fact, the importance of localism – the need to provide more comprehensive and innovative community news and information – is at the core of the argument supporting repeal of the newspaper rule. As discussed at length in our initial comments, common ownership has fostered the development of new outlets like the Chronicle Company's website, the Gate, and its 24-hour local cable news channel, BayTV. These outlets have permitted us to reach more segments of the community, and do so in new ways.¹⁴ Having additional news resources and outlets allows us to produce content that serves the community with more in-depth reporting (*e.g.*, coverage of elections, social issues and culture) as well as niche reporting (*e.g.*, coverage of less popular sports, under-reported consumer issues and micro-climate meteorology).¹⁵ Absent common ownership, the Chronicle Company believes that it "would have lacked the economic incentive, the personnel, and the experience to provide as many fora for community information."¹⁶ The record is replete with similar examples as many commenting parties showed that common ownership enhances the quantity and quality of local news coverage.¹⁷

¹³ Comments of UCC at 3.

¹⁴ See Comments of the Chronicle Company at 21-25.

¹⁵ See Comments of the Chronicle Company, Declaration of John Coate ("Coate Declaration"), ¶ 12. Unless otherwise noted, all declarations are contained within the Comments of the Chronicle Company. Our comments extensively documented how common ownership allows more resources to be devoted to local news and public affairs coverage and promotes the development of interactive local services. See *e.g.*, Declaration of Stanley Besen & Daniel O'Brien, at 2-5; Declaration of Daniel Rosenheim ("Rosenheim Declaration"), ¶¶ 5, 10 (the Chronicle and KRON may jointly charter aircraft or share the expenses of a public opinion poll; synergies add depth and quality to news coverage); Declaration of John Sias ("Sias Declaration"), ¶ 9 (the Chronicle and KRON try to enhance the news coverage provided by each other).

¹⁶ Sias Declaration, ¶ 15.

¹⁷ See, *e.g.*, Comments of ALTV at I, 30 (citing FCC finding); Comments of Hearst at 2-3 (Hearst could improve news and information coverage if it were permitted to acquire newspapers); Comments of Elyria at 15 (the quality of program service is related to the amount of available capital; a newspaper-broadcast combination would yield additional resources for programming); Comments of FOE at 20

B. Newspaper-Broadcast Combinations Do Not Decrease the Number of Separate Outlets

In San Francisco, the Chronicle Company's ownership of a newspaper and television station has resulted in an increased commitment to the news department in each of these outlets as well as in the new media outlets that benefit from both the newspaper and television station resources. For example, the staff of BayTV has nearly doubled in the several years¹⁸ and the Gate has amassed a staff of 35.¹⁹ Each outlet has its own independent editorial staff and editorial voice;²⁰ each competes with the others, has its own mission and audience, and takes a different approach to covering the news.²¹ The Chronicle Company's support of a cable news channel and a website that lose money, but provide important local services, supports our conclusion that common ownership provides an impetus and the ability to incubate risky and unprofitable local media.

Other joint newspaper-broadcast owners report similar experiences. Belo says its newspapers and stations compete aggressively against each other and that economic forces encourage separate editorial policies.²² Gannett has a policy of keeping its outlets separate.²³ Tribune runs each of its Chicago outlets as a stand-alone business with regard to programming

(economies of scale would yield additional resources); Comments of the National Association of Broadcasters ("NAB") at 9-11 (providing a study showing efficiencies from common ownership can increase operating cash flows up to 22%).

¹⁸ See Declaration of Janette Gitler ("Gitler Declaration"), ¶ 4.

¹⁹ See Coate Declaration, ¶ 8.

²⁰ See *id.* ¶ 3; Sias Declaration, ¶¶ 8, 11; Rosenheim Declaration, ¶ 4.

²¹ See Rosenheim Declaration, ¶ 4; Coate Declaration, ¶ 6.

²² See Comments of Belo at 16-22.

²³ See Comments of Gannett at 2-4.

and editorial policy, including news and public affairs programming.²⁴ Even smaller-market combinations, like that of West Virginia Radio Corporation, attest that they keep news-gathering and reporting completely separate.²⁵

C. Common Ownership Leads to the Production of More Diverse Content

Ownership of a newspaper and a broadcast station in the same market has enhanced the Chronicle Company's ability to provide comprehensive coverage of controversial issues. For example, the Chronicle Company was uniquely able to heed President Clinton's call for a national dialogue on race by producing *About Race* -- comprehensive (and often interactive) coverage of San Francisco Bay Area racial issues in the Chronicle, and on the Gate, KRON, and BayTV.²⁶ The Chronicle provided in-depth stories, KRON gave the topic immediacy with powerful interviews, BayTV did hour-long follow-up programs that let community leaders discuss the issues in detail, and the Gate provided all Bay Area residents with an interactive forum to discuss many of the topics that were raised.²⁷ None of these outlets covered the controversy in the same way. The *Voice of the Voter* series provides another example of how common ownership enabled the Chronicle Company to cover controversial issues with greater impact. The goal of this initiative was to provide Bay Area viewers, readers, and "surfers" alike with comprehensive election and campaign coverage.²⁸

²⁴ See Comments of Tribune at 38.

²⁵ See Comments of West Virginia Radio Corporation at 2. For additional support for the position that newspaper-broadcast combinations do not harm diversity, see also Comments of Elyria at 15, Comments of FOE at 20; Comments of Media Institute at 6.

²⁶ See Comments of the Chronicle Company at 20.

²⁷ See *id.*

²⁸ See Rosenheim Declaration, ¶ 6.

D. Newspaper-Broadcast Combinations Effectively Support New Technologies That Produce Substantial Local Content

As explained in detail in our initial comments, the Chronicle Company's website, the Gate, builds on and adds to newspaper and television content.²⁹ Indeed, the hybrid nature of the internet is such that both print and broadcast skills and resources are necessary to produce a top-quality news and local information website.³⁰ The Gate uses these skills and resources to produce its own content, develop interactive fora to discuss breaking news, and integrate text and video to create new services.³¹ Even content that is initially sourced from the Chronicle and KRON is combined in new ways designed to make use of the unique capabilities of the internet. Contrary to the fears of proponents of the newspaper rule, the Gate has never delayed the introduction of a story on its website to permit another Chronicle outlet to break the story first. Unlike a newspaper that is only published a few times a day and a broadcaster that can only provide a few daily news programs, the internet is a 24-hour service. One of the primary purposes of the Gate is to take advantage of this feature by providing up-to-date news and information, twenty-four hours a day.

Others report similar experiences with developing new media from the strengths of common ownership. For example, Tribune has developed a Chicago website that contains up-to-the-minute news and community affairs information, including news that has yet to appear in one of its other outlets. Some news is taken from both its newspaper and its broadcast stations.³² Furthermore "common ownership ... would permit Tribune to invest heavily in developing its

²⁹ See Comments of the Chronicle Company at 21-23; Coate Declaration, ¶¶ 6, 9, 10, 12, 14-16.

³⁰ See *id.* at 14-15.

³¹ See Coate Declaration, ¶ 14.

³² See Comments of Tribune at 75.

websites where it can make its content available in yet another format."³³ Similarly, Hearst-Argyle Television, Inc. says that the newspaper rule stifles innovation and that its repeal would lead to the development of 24-hour news delivery systems that focus on local issues and innovative cross-platform products and services.³⁴ Other commenting parties also highlight the importance of common ownership for innovation.³⁵

IV. THE COMMENTERS OPPOSING REPEAL OF THE NEWSPAPER RULE MISUNDERSTAND THE FACTS AND OFFER NO CREDIBLE SUPPORT FOR THEIR POSITION

The two sets of comments opposing repeal of the newspaper rule – by the Center for Media Education, et al. ("CME") and the UCC -- express some of the same generalized fears that the Commission expressed in 1975. They rely on unproven speculation, supposition, and occasional anecdote, rather than fact. When tested against the decades of direct experience reported in our comments and the comments of numerous other newspapers and broadcasters, such speculation is not sufficient to sustain the newspaper rule, particularly in light of Congress' demand that the Commission take a hard look at the rule.

For example, proponents of the newspaper rule contend that common ownership leads to the diminution of news staffs and voices.³⁶ In fact, as described in Section III above, the Chronicle Company has increased the reporting staffs in each of its local outlets. The television station and the newspaper are entirely responsible for their own reporting and editorial content. To the extent that common ownership facilitates the sharing of any resources (*e.g.*, columnists

³³ *Id.* at 74-75.

³⁴ *See* Comments of Hearst-Argyle Television, Inc. ("Hearst-Argyle") at iii, 19.

³⁵ *See, e.g.*, Comments of Gannett at 5 (newspaper rule prevents offering new and alternative services).

³⁶ *See* Comments of CME at 28.

between the station and the newspaper or a newscast segment between the station and the cable channel), such sharing reduces duplication of resources and permits increased and more varied coverage.³⁷

Proponents of the newspaper rule also claim that common ownership leads to censorship³⁸ or the avoidance of controversy.³⁹ The Chronicle Company's record belies these fears. We have proved our commitment, as a matter of good business and good editorial policy, to covering matters independently in the newspaper, television station, cable channel and website.⁴⁰ Rather than motivating the outlets to avoid controversy, common ownership has made it easier to develop the capacity to air more controversy and to allow the public to participate more fully in controversial discussions. Other commenters have had similar experiences with common ownership.⁴¹

Proponents of the newspaper rule contend that new media do not make contributions to diversity sufficient to justify repeal of the rule.⁴² Of course, the internet and other new media are still in their infancy, but they are already contributing to diversity in markets that are already

³⁷ CME claims that cable operators that are commonly owned with broadcast stations "would be unlikely to carry local news because they would not want to compete with their own television station." See Comments of CME at 29. We do not comment here on the cable multiple ownership rule. With respect to the newspaper rule, our experience has been quite the reverse. Rather than removing all news from BayTV, the Chronicle Company reaffirmed its commitment to local news, building BayTV into a pre-eminent 24-hour news and local information station. See Gitler Declaration, ¶¶ 1,3,4. Instead of reducing two voices to one, the combination of a newspaper and broadcast station has resulted in the Chronicle Company's contribution of four independent but complementary outlets in San Francisco.

³⁸ See Comments of CME at 4.

³⁹ See Comments of CME at 2; See Comments of UCC at 7-8.

⁴⁰ See Section III, *supra*; Rosenheim Declaration, ¶ 4.

⁴¹ See Comments of Belo at 18-20.

⁴² See Comments of CME at 8-10. CME seems to think that internet sites owned by newspapers or television stations "do not provide original local news coverage." Comments of CME at 9. Our website, the Gate, provides constantly updated intensely local and interactive news coverage that is not duplicated on any other Bay Area outlet, including KRON or the Chronicle.

diverse. Moreover, investments in new media of the sort that broadcast-newspaper combinations can support should be encouraged so that the potential of these new interactive and comprehensive local outlets can be fully realized.

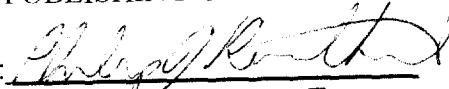
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The Notice asks whether broadcast-newspaper combinations would enhance news and public affairs programming. In its comments, the Chronicle Company joined a large majority of commenters to answer a resounding "yes." Only two comments questioned this conclusion based on assumptions that are unfounded and contrary to experience. As shown herein, newspaper-broadcast cross ownership will contribute importantly to the very diversity and localism that the Commission wishes to encourage.

We urge the Commission promptly to issue a Notice of Proposed Rulemaking looking to accelerated repeal of this antiquated relic of another era. When the newspaper rule is ultimately repealed, the Commission and the American people will be rewarded with better local news and public affairs programming, and a world of new local media offerings whose potential we may now only be beginning to see.

Respectfully submitted,

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